

Message Text

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ACTION L-03

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SUBJ: POLITICS, TORTURE ARISE IN FACH TRIALS

REF: SANTIAGO 2272

1. SUMMARY. CHILEAN AIR FORCE COURT HAS EFFECTIVELY RULED OUT ANY DEFENSE BASED ON LEGITIMACY OF ALLENDE GOVT BEFORE MILITARY COUP OF SEPT 1973. ISSUE OF TORTURE RAISED FOR FIRST TIME BUT UNRESOLVED BY COURT. END SUMMARY.

2. IN WHAT HAS BEEN DESCRIBED AS "TENSE" SCENE APRIL 29 AT CONTINUING AIR FORCE (FACH) TRIALS, A DEFENSE LAWYER WAS CUT OFF AND CASE OF HIS DEFENDANT SUSPENDED WHEN ISSUE OF LEGITIMACY OF ALLENDE GOVT BEFORE SEPT 11 COUP, AND TORTURE, WERE RAISED DIRECTLY FOR FIRST TIME. EMBASSY HAS DRAWN FROM OBSERVERS PRESENT AND FROM FAIRLY COMPLETE PRESS REPORTS FOLLOWING STORY.

3. LAWYER HECTOR BASOALTO BUSTAMANTE, DESCRIBED AS YOUNG "APPRENTICE" ATTORNEY SUPPLIED BY LEGAL AASSISTANCE SERVICE OF BAR ASSOCIATION (COLEGIO DE ABOGADOS) PRESENTED DEFENSE OF EX-SGT FRANCISCO MALDONADO, FOR WHOM PROSECUTION HAS ASKED SENTENCE OF THREE YEARS. BASOALTO READ PREPARED STATEMENT WHIKH
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MAINTAINED THAT ALLENDE GOVT WAS LEGITIMATE AND THUS COULD

NOT CONSTITUTE "ENEMY" AT LEAST UP TO SEPT 11. COURT CUT HIM OFF AND TOLD HIM TO DEFEND CLIENT, NOT USE TRIAL FOR POLITICAL FORUM. DEFENSE LAWYER SKIPPED PART OF STATEMENT AND THEN RAISED ISSUE OF TORTURE OF HIS CLIENT, IN RELATION TO CONFESSION. PROSECUTOR (FISCAL) GEN GUTIERREZ INTERRUPTED IN FURIOUS MANNER, DENYING TORTURE AND POINTING OUT THAT PROPER MANNER FOR DEFENSE LAWYER TO PROCEED WAS TO FILE DIRECT PERSONAL CHARGES AGAINST RESPONSIBLE FISCAL IF TORTURE OF DEFENDANT CLAIMED.

4. BASOALTO, BY NOW APPARENTLY THOROUGHLY COWED, DID NOT RESPOND AND COURT MADE NO RULING ON TORTURE ISSUE. DEFENSE WENT ON WITH PREPARED STATEMENT BUT SOON STRAYED INTO "LEGITIMACY" ISSUE AGAIN, AT WHICH POINT PRESIDING JUDGE GEN SOLER SUSPENDED SESSION, TOOK PREPARED STATEMENT FROM DEFENSE LAWYER, AND RECESSED COURT TO PERMIT STUDY OF NEED FOR NEW DEFENSE ATTORNEY IN CASE. BASOALTO WAS CALLED INTO PRIVATE SESSION WITH JUDGES, BUT EMERGED WITH NO COMMENT FOR PRESS.

5. ACCORDING TO SPOKESMAN FOR FACH, DEFENDANT MALDONADO THANKED GEN. SOLER BECAUSE HE, MALDONADO, REALIZED THAT HIS LAWYER WAS MAKING POLITICAL USE OF HIS CASE.

6. ON MAY 2 SANTIAGO PRESS PUBLISHED LETTER SENT BY GEN. SOLER TO PRESIDENT OF COLEGIO DE ABOGADOS. IN THIS LETTER GEN. SOLER SAID THAT COURT HAD BEEN FORCED TO INTERRUPT DEFENSE IN CASE BECAUSE "APPRENTICE" LAWYER HAD PRESENT POLITICAL ARGUMENTS WHICH ATTEMPTED TO REFUTE "VARIOUS ORGANS" WHICH HAD DECLARED THE ALLENDE GOVERNMENT ILLEGITIMATE, AND TO CALL INTO QUESTION LEGITIMACY OF COUP (PRONUNCIAMIENTO) AND PRESENT GOVERNMENT. ACCORDING TO COURT, THIS HAS NOTHING TO DO WITH CASE OF DEFENDANT WHO IS CHARGED WITH FAILURE TO CARRY OUT HIS MILITARY DUTIES. COLEGIO ASKED TO DESIGNATE ANOTHER LAWYER WHO WILL CONFINE HIMSELF TO DEFENDING HIS CLIENT. COURT NOTED GRATUITOUSLY THAT LAWYER GUILLERMO CACERES ACKNOWLEDGED THAT HE "DIRECTED" A GROUP OF LAWYERS INCLUDING BASOALTO AND REVIEWED THEIR PREPARED DEFENSES. THESE LAWYERS ACCORDING TO THE COURT ARE OF "KNOWN MARXIST AFFILIATION" WHO ARE ALSO DIRECTED BY "KNOWN COMMUNIST LAWYER" FERNANDO OSTORNOL FERNANDEZ. GEN. SOLER ASKED THAT BAR "DISCIPLINE" OFFENDERS. LIMITED OFFICIAL USE

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7. COMMENT. KEY POINT IN PRESENT GOC'S JUSTIFICATION BOTH FOR COUP AND FOR THESE TRIALS IS THAT ALLENDE GOVT LOST ITS LEGITIMACY AT SOME SO-FAR-UNDEFINED POINT PRIOR TO THE COUP. GOC IS EVIDENTLY NOT RPT NOT PREPARED TO LET THAT CLAIM BE CHALLENGED. IF GOC MAINTAINS THIS POSITION, AND POSITION THAT CHARGES OF TORTURE SHOULD NOT BE CONSIDERED IN THE CURRENT PROCEEDINGS, CONVICTIONS WILL OF COURSE BE MUCH MORE LIKELY.

AT SAME TIME, THIS EPISODE EMPHASIZES SPECIAL POLITICAL
SETTING IN WHICH TRIALS ARE TAKING PLACE (REFTEL).
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